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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MELVIN HOOKS,

Defendant and Appellant.

F068921

(Super. Ct. No. 09CM8571)

OPINION

APPEAL from a judgment of the Superior Court of Kings County. Donna L. Tarter, Judge.

Laura P. Gordon, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and John W. Powell, Deputy Attorneys General, for Plaintiff and Respondent.

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This case returns to us following a prior appeal and subsequent resentencing under Proposition 36, also known as the Three Strikes Reform Act of 2012 (see Pen. Code,¹

¹ All further statutory references are to the Penal Code.

§ 1170.126, subd. (b)). In *People v. Hooks* (Nov. 14, 2011, F061192) [nonpub. opn.] (*Hooks I*), we affirmed the trial court’s imposition of consecutive prison terms based upon appellant’s convictions for resisting a peace officer and possession of marijuana in a custodial facility. Our prior opinion rejected the argument that consecutive sentencing violated section 654 and/or constituted an abuse of the trial court’s discretion. The present appeal attempts to re-litigate the exact same issues. We conclude that appellant’s claims are barred under the law of the case doctrine, and therefore affirm the judgment.

STATEMENT OF THE CASE²

In September 2010, a jury found Melvin Hooks guilty of resisting a peace officer by means resulting in serious bodily injury to the officer (§ 148.10, subd. (a)) and possession of marijuana in a custodial facility (§ 4573.8). These crimes occurred at Avenal State Prison, where Hooks was serving a 15-year prison term for a 2001 robbery conviction. In a separate proceeding, Hooks admitted suffering two prior strike convictions (see §§ 667, 1170.12). The trial court thereafter imposed two consecutive sentences of 25 years to life, which were to run consecutive to the term Hooks was already serving. Hooks appealed on grounds that the imposition of sentence on both of the 2010 convictions violated the section 654 proscription against multiple punishment or, in the alternative, that the trial court abused its discretion by imposing consecutive sentences for those crimes. We affirmed the judgment.

Our opinion in *Hooks I* concluded that “appellant, while committing one offense – possession of marijuana in prison – committed a second, assaultive offense in response to an unforeseen circumstance: the search of his person being conducted in response to the directive that prison staff conduct searches of randomly chosen inmates. As in [*People v.*

² We incorporate by reference the background information and legal analysis set forth in *Hooks I*, which is briefly summarized here to frame the issues in this appeal. Our prior opinion is cited and relied upon pursuant to rule 8.1115(b) of the California Rules of Court, as it is relevant under the law of the case doctrine.

Vidaurri (1980) 103 Cal.App.3d 450 (*Vidaurri*)], the commission of [those] offenses did not constitute an indivisible course of conduct.” Based on our review of the record, we expressly held that substantial evidence supported the trial court’s finding that Hooks acted with separate criminal intentions in his commission of the 2010 offenses.

“Therefore, the court did not violate section 654 in imposing sentence on both offenses.” With regard to Hooks’ alternative argument, we determined there was sufficient evidence to support the conclusion that the crimes at issue, and Hooks’ objectives in committing those crimes, “were predominantly independent of each other” within the meaning of California Rules of Court, rule 4.425(a)(1). “Therefore ... the [trial] court did not abuse its discretion in imposing consecutive sentences.”

In January 2013, Hooks petitioned the trial court for resentencing pursuant to section 1170.126. The petition was granted approximately one year later. The trial court vacated Hooks’ original sentence and resentenced him to a total term of nine years and four months in prison. The new sentence was calculated as follows: (1) As to the conviction under section 148.10, subdivision (a), the upper term of four years, doubled to eight years because of the prior strike convictions; and (2) for the section 4573.8 conviction, a consecutive term of eight months (representing one-third of the middle term), doubled to 16 months because of the prior strikes. Hooks had requested that the 16-month sentence be imposed concurrently pursuant to the argument that both crimes were “incident to the same exact situation.” The trial court rejected this argument, finding again that the crimes “involved objectives that were independent of each other and [were] committed at separate times.”

In this appeal, Hooks advances the same legal arguments with regard to the trial court’s resentencing decisions as were presented in *Hooks I* concerning the imposition of consecutive prison terms. Appellant first contends that section 654 precludes punishment for both of his crimes because there was “no evidence” to support the conclusion that his actions involved separate criminal objectives. He further submits that he did not engage

in assaultive conduct and thus attempts to distinguish *Vidaurri, supra*, which we had relied upon in our prior opinion. His second, alternative argument, asserts that the trial court abused its discretion by imposing consecutive sentences because its finding of independent objectives for purposes of California Rules of Court, rule 4.425(a) is “not supported by the record.”

DISCUSSION

“The law of the case doctrine states that when, in deciding an appeal, an appellate court “states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal””

(*People v. Alexander* (2010) 49 Cal.4th 846, 870 (*Alexander*).) The doctrine encompasses an appellate court’s decision on the sufficiency of the evidence. (*People v. Barragan* (2004) 32 Cal.4th 236, 246; *Wells v. Lloyd* (1942) 21 Cal.2d 452, 455.) The doctrine also applies to determinations regarding whether or not a trial court’s order constitutes an abuse of discretion. (See *Alexander, supra*, 49 Cal.4th at p. 870.)

“Where the sufficiency of the evidence to sustain the judgment depends on the probative value or effect of the evidence itself (as distinguished from the credibility of witnesses), and there is no substantial difference in the evidence in the retrial, the former decision is law of the case.” (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 470, p. 528.) “Additional evidence merely cumulative to evidence of the same class given on the first appeal will not carry a question outside the operation of the rule as to the law of the case, but to successfully escape the rule a new and substantial fact must be brought into the case on the subsequent appeal.” (*Ibid*, quoting *Estate of Baird* (1924) 193 Cal. 225, 245.) A reviewing court may look to its opinion in the prior appeal to determine whether or not the evidence at issue in a subsequent proceeding is substantially the same. (9 Witkin, Cal. Procedure, *supra*, Appeal, § 470, p. 529.) Here, there is no question that the trial court’s findings at resentencing were based on the same evidence that we found

to be sufficient in *Hooks I* to justify the imposition of consecutive sentencing, i.e., the facts and circumstances surrounding appellant's commission of the underlying offenses.

The law of the case, as set forth in *Hooks I*, is that the evidence of the manner in which the underlying offenses were committed is sufficient to support a finding of separate criminal objectives for purposes of section 654. The same is true with regard to any similar inquiries under rule 4.425(a) of the California Rules of Court. Our prior rulings on these legal issues foreclose Hooks' claims in the current appeal.

DISPOSITION

The judgment is affirmed.

GOMES, Acting P. J.

WE CONCUR:

DETJEN, J.

FRANSON, J.